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FISCAL IMPACT STATEMENT

LS 6019 **NOTE PREPARED:** Mar 16, 2005
BILL NUMBER: SB 18 **BILL AMENDED:** Mar 14, 2005

SUBJECT: State Ethics; Loss of Office by Convicted Official, Inspector General.

FIRST AUTHOR: Sen. Lawson C **BILL STATUS:** As Passed House
FIRST SPONSOR: Rep. Foley

FUNDS AFFECTED: X **GENERAL** **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: This bill has the following provisions:

(A) It conforms several provisions concerning eligibility for or removal from elected office by: (1) providing a uniform definition of a felony; and (2) specifying that the time for disqualification or removal is when the verdict is announced or the person pleads guilty.

(B) It creates the Office of the Inspector General and allows the State Ethics Commission to refer a matter for investigation by the Inspector General.

(C) It prohibits state officers, employees, and special state appointees from accepting employment or other benefits or from participating in any decision that would constitute a conflict of interest.

(D) It requires the Department of Administration to adopt rules requiring a person who lobbies the executive branch to register as an executive branch lobbyist.

(E) It mandates a one-year waiting period before a former state officer, employee, or special state appointee may accept compensation as: (1) a lobbyist; or (2) an employee of an entity that the former state officer, employee, or special state appointee negotiated with, regulated, supervised, or licensed.

(F) It prohibits a former state officer, employee, or special state appointee from any involvement in a particular matter that the state officer, employee, or special state appointee personally and substantially participated in while a state officer, employee, or special state appointee.

(G) It allows the Commission to: (1) issue reprimands; (2) terminate or suspend an employee or special state appointee; (3) recommend the impeachment of a state officer; and (4) bar a person from state employment; if the Commission determines that the person has violated the ethics code or committed other misconduct.

(H) It makes: (1) unlawful retaliation against an employee for cooperating with the Commission; or (2) interfering with an Inspector General investigation; a Class A misdemeanor.

(I) It requires the Inspector General to investigate wrongdoing affecting state government and establish a Code of Ethics.

(J) It provides that records of the Office of the Inspector General, other than confidential records, are subject to public inspection and it specifies that the Open Door Law applies to public meetings of the Inspector General.

(K) It allows the Inspector General to bring, in a matter involving public misconduct, a: (1) civil action on behalf of the state if the Attorney General does not do so; and (2) criminal prosecution on behalf of the state if a prosecuting attorney does not do so and a Court of Appeals judge authorizes the appointment of the Inspector General as a special prosecutor.

(L) It requires random selection of the Court of Appeals judge who determines whether the Inspector General should be appointed as a special prosecuting attorney.

(M) It specifies that the Office of the Inspector General is a law enforcement agency.

(N) It permits a prosecuting attorney to appoint the Inspector General or a deputy inspector general as a deputy prosecuting attorney in a case involving public misconduct.

(O) It allows the Inspector General to bring certain forfeiture actions.

(P) It makes official misconduct and profiteering from public service a Class D felony.

(Q) It permits a person to bring a civil action on behalf of the state to recover money owed to the state due to the filing of a false claim.

(R) It allows the Attorney General to intervene in a civil action concerning a false claim and allows the Inspector General to intervene if the Attorney General is disqualified from intervening or elects not to intervene.

(S) It provides that the person initiating the civil action is entitled to from 10% to 25% of the proceeds recovered in the action if the Attorney General or the Inspector General intervenes, and from 25% to 30% if the Attorney General or Inspector General does not intervene.

(T) It permits the Attorney General and the Inspector General to issue a civil investigative demand in an action involving a false claim and establishes procedures for the issuance of civil investigative demands.

(U) It provides enhanced relief for a whistleblower who has been retaliated against by an employer for assisting in an investigation concerning a false claim.

(V) It makes other changes and conforming amendments.

Effective Date: Upon passage; July 1, 2005.

Explanation of State Expenditures: (Revised) *Summary* - The bill would potentially increase administrative expenses by establishing an Office of the Inspector General and by including additional groups subject to the State Ethics Commission and standards of conduct. The increase of expense would depend on administrative actions, but could range from $626,300 to $1,407,600 to establish the Office of the Inspector General. The Inspector General's Office could also incur expenses if a county attorney is appointed a special prosecutor at the request of the Inspector General. To the extent that the Office of the Inspector General detects misappropriation or misuse of public funds and is able to recover the funds under one of the methods available in the bill, savings would occur. The bill has criminal penalties which would increase revenue from criminal fines or increase costs for incarceration. Also, the ultimate impact of this legislation will depend upon the number of actions filed as a result of the whistleblower provisions as provided in this bill. Details on each of these points are provided below.

Office of the Inspector General: The establishment of an Office of the Inspector General and the statutory transfer of the investigative function of the State Ethics Commission to the Inspector General may increase costs associated with investigation of misconduct. Any costs that might be incurred from establishment of an Office of the Inspector General will depend upon the actions of the Inspector General. Under the bill the Governor would appoint the Inspector General and set the Inspector General's compensation. The Inspector General would be director of the Office and may appoint additional employees as needed and set their salary with the approval of the Budget Agency.

Although the personnel requirements and salary costs will be established by the Inspector General, estimates based on other states' information indicate that annual salary and benefits may cost between $520,000 and $1,200,000. In addition to personnel costs, the new Office of the Inspector General may require between $82,000 to $151,000 for general office supplies, training and travel, and computers, including a server, network, and laptops, again based on the experience in other states. Other costs may include investigative equipment, such as recorders and televisions. If the Office is unable to obtain space in the existing government office facilities, the Inspector General may have to lease office space at an estimated cost of $24,300 or $56,600, depending on the number of employees. Also, the Inspector General would provide rooms and staff assistance for the State Ethics Commission. Currently, the State Ethics Commission receives an appropriation and, between FY 2001 and FY 2004, had average annual expenditures of $243,810.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

(Revised) *Background on the Office of the Inspector General:* Under the bill, the Governor would appoint an Inspector General to initiate, supervise, and coordinate investigations; recommend polices to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct; receive complaints concerning violations of ethics, bribery, official misconduct, among other crimes; and properly train individuals in the code of ethics adopted by the Inspector General. In addition, the Inspector General may file civil or criminal actions when the

Attorney General or a prosecuting attorney have declined to file. Also, the Governor could recommend that a special prosecuting attorney be appointed by a judge of the Court of Appeals. The Inspector General or a county prosecuting attorney from a county other than the county of concern may be appointed. If a county prosecutor is appointed, the Office of the Inspector General would reimburse the special prosecutor for reasonable expenses of investigation and prosecution.

Background on the Office of the Inspector General from Other States: Ten states have inspectors general with authority to investigate state agencies that report to the governor or all entities that receive state funds. [Note: There are other states with departmental inspectors general that examine only one department of state or a particular authority or program.] Seven of the ten offices were established by executive order, and another seven were established within the past decade. The following table summarizes available information about the other offices.

State	Year Established	Authorized by	Other
Florida	1994		Developing inspector general best practices.
Georgia	2003	Executive Order	FY2004 appropriation - $1.4M and 10 positions.
Illinois	2003	Executive Order	FY2004 appropriation - $4.1M; FY2005 appropriation - $5.7M.
Louisiana	1988	Executive Order	Staffing: 11 auditor, 1 clerical staff, 1 attorney.
Massachusetts	1981	Legislation	Mission: To prevent fraud, waste and abuse.
New Jersey	2004	Executive Order	Projected $3M operating budget and 12 positions.
New York	1996		
Ohio	1988	Executive Order (statute in 1990)	Joint Legislative Ethics Committee's staff is known as the Legislative Inspector General. FY2004 and FY2005 appropriation - $912,000 and 7 employees.
Pennsylvania			FY2005 appropriation - $3.4M.
Virginia	2004	Executive Order	

State Ethics Commission: Under current law, the State Ethics Commission oversees ethics and conflicts of interest concerning state employees and state agencies using various powers given in statute. Under the bill, most of the Commission's powers would not change. However, instead of investing on its own behalf, the Commission would be administered by the Office of the Inspector General.

The bill would add certain groups to the jurisdiction of the State Ethics Commission, to the provisions of the statute, and to the code of ethics for conduct of state business that would be adopted by the Inspector General. These groups include individuals who contract with an agency for personal services for less than 30 hours a week for more than 26 weeks a year, former special state appointees, and executive branch lobbyists as defined in IC 4-2-7-1. There are no data available to estimate the additional cost of administering these groups, since costs will depend on the actions of these individuals.

Reporting a Violation: This bill changes the procedure for state employees to report violations by other state employees. Current law states that an employee may report violations in writing to their supervisor, or if the supervisor is also the violator, then to the State Ethics Commission. This bill requires that these reports be made to the supervisor or, otherwise, the Inspector General.

Under current law, if an employee does not make a reasonable attempt to ascertain the correctness of the information they are reporting, the employee is subject to discipline by their appointing authority. The bill provides that the State Ethics Commission as well as the appointing authority can bring a disciplinary action against the employee. The possible increase in administrative costs to the State Ethics Commission will depend upon administrative decisions, and it is estimated that the State Ethics Commission could cover these costs through the use of existing staff and resources.

False Claims Against the State: This bill creates a new civil cause of action against persons who knowingly or intentionally:

(1) present a false claim to the state for payment or approval;
(2) make or use a false record or statement to obtain payment or approval of a false claim from the state;
(3) with intent to defraud the state, deliver less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
(4) with intent to defraud the state, authorize issuance of a receipt without knowing that the information on the receipt is true;
(5) receive public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
(6) make or use a false record or statement to avoid an obligation to pay or transmit property to the state;
(7) conspire with another person to perform an act described in subdivisions (1) through (6); or,
(8) cause or induce another person to perform an act described in subdivisions (1) through (6).

(These provisions do not apply to claims concerning Income Tax under IC 6-3.)

The impact of this provision will ultimately depend upon the number of actions that are filed as a result. Any administrative cost increase will be incurred by both the AG and Inspector General. The AG and Inspector General have concurrent jurisdiction over these actions. The AG may bring, or intervene in, an action involving a violation listed above. If the AG is disqualified from bringing the action, then the Inspector General may bring or intervene in the action. Therefore, depending on the number of actions filed, the administrative cost impact could be significant.

This bill also provides that a person found liable for a listed violation is liable for the costs to the AG or Inspector General in bringing the action. This provision will help to alleviate the administrative cost impact on both the AG and Inspector General.

Whistleblower Protection: This provision of the bill states that the person who initially files the complaint is entitled to a portion of the proceeds of the action if the state prevails. This provision will not have any impact on expenditures of the state. As explained in more detail below, this provision will impact the revenues collected by the state, if the state prevails.

Department of Administration: The bill would require the Department of Administration to adopt rules concerning registration of executive branch lobbyists. Costs associated with rules adoption are expected to be covered within the existing resources of the Department.

Criminal Penalties: There are no data available to indicate how many offenders may be convicted of the crimes established under the bill. A Class A misdemeanor would be established for retaliation or threat of retaliation, and for interfering with an investigation conducted by the Inspector General. The behavior that defines these crimes is prohibited under current law, but no criminal penalty currently exists. The bill would increase the penalty from a Class A infraction to a Class A misdemeanor for an employer who knowingly or intentionally violates a section concerning reporting of crimes and appeals by state employees. Also, the criminal penalty for official misconduct would increase from a Class A misdemeanor to a Class D felony. Another crime, profiteering from public service, would increase from a Class A infraction to a Class D felony. Finally, the bill would establish a Class A infraction prohibiting a member who resigns from the General Assembly from lobbying or registering as a lobbyist until at least 365 days have elapsed since the member's resignation.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately $1,825 annually, or $5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months. The maximum judgment for a Class A infraction is a $10,000 fine, which is deposited in the state General Fund.

Explanation of State Revenues: *State Ethics Commission:* Under current law, the Commission may impose a civil penalty, cancel a contract, or bar a person from entering into a contract with a state agency. Under the bill, the civil penalty would no longer be capped at $10,000, but would be three times the value of any benefit received. Civil penalties are generally deposited in the state General Fund, unless otherwise specified. Also, the bill would add ordering restitution or disgorgement among the penalties that the Commission could impose. To the extent that restitution is paid, recovered resources could be reassigned to another state purpose.

False Claims: In creating this new cause of action, this bill also creates a new penalty structure. If found liable in this civil action for a false claim against the state, the following penalties attach:

(1) the person is liable to the state for a civil penalty of at least $5,000; and
(2) is liable for up to three times the amount of the damages sustained by the state; and
(3) is liable for the costs to the AG or Inspector General in bringing the action.

Although if the factfinder determines that the liable person:

(1) furnished the state officials with all information known to the person not later than 30 days after obtaining the information;
(2) fully cooperated with the investigation of their own violation;
(3) had no knowledge of an investigation, criminal prosecution, civil action, or administrative action concerning their violation at the time they provided the information to the state official;

then the violator is liable for not less than two times the amount of damages that the state sustained because of the violation and for the costs to the AG or Inspector General in bringing the action.

These penalty provisions will result in an indeterminable increase in revenue to the state. The amount of revenue ultimately depends upon the number of successful actions and the size of the damages and fines imposed.

The revenue from these penalties could also be reduced by persons entitled to a percentage of the award through the whistleblower protection provisions. The revenue collected from these penalties will be deposited in the state General Fund.

Whistleblower Protection: The person who initially files the complaint is entitled to reasonable attorneys' fees and costs plus the following amounts if the state prevails in the action:

(1) If the AG or Inspector General intervened in the action, then the person is entitled to 15% to 25% of the proceeds.
(2) The person is entitled to receive no more than 10% of the proceeds if the AG or Inspector General intervened, but the court finds that the evidence used to prosecute was contained in:
(a) a transcript of a criminal, civil, or administrative hearing;
(b) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
(c) a news media report.
(3) The person is entitled to 25% to 30% of the proceeds if the AG and Inspector General *did not* intervene.

If the person who initially filed is a violator of the *false claims* provisions from above or has previously been convicted for a false claim against the state, then the person is not entitled to any of the proceeds.

These provisions of the bill will impact state revenues to the extent that the person filing the action is entitled to a percentage of the proceeds.

Criminal Penalties: The maximum fine for a Class A misdemeanor is $5,000, and for a Class D felony is $10,000. Criminal fine revenue is deposited in the Common School Fund, and a portion of court fees are deposited in the state General Fund.

Explanation of Local Expenditures: *Criminal Penalties:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Criminal Penalties:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees.

State Agencies Affected: State Ethics Commission; Department of Correction; Department of Administration; Attorney General; Court of Appeals.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Charles Johnson III, State Examiner, Indiana State Board of Accounts, 317-232-2524;

State of Louisiana Office of the Inspector General, http://www.state.la.us/oig/inspector.htm; State of Ohio Office of the Inspector General, 614-644-9110 and http://www.state.oh.us/watchdog/; Deborah L. Steiner, First Deputy Inspector General, State of Illinois Office of the Executive Inspector General, 312-814-5600 and http://inspectorgeneral.il.gov/; Indiana Sheriffs' Association.

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